

IN THE
SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1944

No.

IDA GUSS, *Petitioner*,
v.
LILLIAN EASTON LASTRAP,
INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF
LUCIUS JOSEPH LASTRAP, JR., DECEASED, ET AL.,
Respondent

BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI

Opinion of the Court Below

The opinion of the Court below, the United States Circuit Court of Appeals for the Fifth Circuit, is reported in 142 Fed. (2d) 872. The opinion is also printed in full in the Record (R. 218-222).

Statement of the Case

This has already been stated in the preceding petition (on page 1, et seq.), which is here adopted and made a part of this brief.

Specifications of Error

The Circuit Court of Appeals erred:

1. In holding that the Decisions and Regulations of the Maritime War Emergency Board do not require ship-owners (signatories to the Statement of Principles), to provide Seaman benefits for loss of life attending risks of War and enemy action.
2. In holding that the money paid into the Registry of the Court by the Gulf Oil Corporation is not insurance funds.
3. In holding that funds thus paid into the Registry of the Court was without legal directions or decree.
4. In holding that the Maritime War Emergency Board is without authority to issue an order upon shipowners (signatories to the Statement of Principles) to provide Beneficiaries for American Seamen who succumb to enemy action.
5. In holding (that it is of the opinion) that such sum paid into the Registry of the Court was "in the nature of a gift" from said shipowner.
6. In holding that the Designation Card executed by the deceased failed to measure up to a legal disposition of the funds.

Summary of Argument

- 1). **The money paid into the Registry of the Court by Gulf Oil Corporation constituted insurance funds.**

The indisputable evidence shows that Gulf Oil Corpora-

tion agreed to abide by the Regulations of the Maritime War Emergency Board in providing insurance benefits for its Seaman Employees in the event of loss of life resulting from the perils of war.

2). Petitioner was designated, without qualification and restriction, beneficiary of the insurance funds.

The parties to this litigation have not questioned the validity of the Presidential Order creating the Maritime War Emergency Board, or the Decisions issued by it. Gulf Oil Corporation, employer of the deceased Seaman, was a party Signatory to the Statement of Principles, the purpose of which was to avoid the rock and whirlpool of pending chaos and the uncertainty attending general confusion between employer and employee. The Statement of Principles and Presidential Order appear in the Appendix (pp. 15, et seq.).

ARGUMENT

Point I.

The historical background embracing the reasons and necessity for the creation of this Board are best expressed in the proceedings reported at 1942 A. M. C. 308. Cf. also, 1944 A. M. C. 1020.

The decisions of this Board, pertinent to this litigation, have been made a part of the Appendix (pp. 19, et seq.).

This Board operates under supervision and sanction of United States Maritime Commission (Title 46, Sec. 1111, U. S. C.), with authority to write insurance, etc., and the Maritime War Labor Board, created by Congress (Title 46, Sec. 1257, U. S. C.) governing the relations between op-

erators and crews of American Merchant Vessels (Title 46, Sec. 1122, U. S. C.)

Such matters affecting Commerce are controlled by National Legislation and expressly retained by the Federal Government (Art. 3, Sec. 2, Fed. Constitution).

Thus, the rules, regulations and decisions of this Board have the force and effect of law, not being in conflict with expressed statutory provisions. *MARYLAND CASUALTY CO. v. U. S.*, 251 U.S. 342, 349; *U. S. v. GRINAUD*, 220 U.S. 506; *U. S. v. MOREHEAD*, 243 U.S. 607; *U. S. v. SACKS*, 257 U.S. 37; *U. S. v. BIRDSALL*, 233 U.S. 223.

This principle has been applied where similar rules and regulations, enacted by administrative bodies, have been challenged. *THE FOOD AND DRUGS ACT, U. S. v. SHREVEPORT GRAIN & ELEVATOR CO.*, 287 U.S. 77; *THE VETERANS BUREAU ACT, BAWYER v. U. S. (C.C.A.)*, 10 F. (2d) 416; and *WAR SAVINGS STAMPS, WARREN, EXECUTRIX v. U. S.*, 68 Ct. Cl. 634 (writ den.), 281 U.S. 739.

It is fundamental that in all the Courts, and certainly in the Courts of first instance, the declaration of purpose and policy is entitled to gravest consideration, and, unless clearly overthrown by facts of record, must prevail. There are no such facts of record in this case.

The War Power of the United States is not abridged by the provisions of the Constitution and its Amendments. As this Court has said: "It is a power to wage war successfully, and thus it permits the harnessing of the entire energies of the people in a supreme cöoperative effort to preserve the nation." *HOME BLDG. & LOAN ASSN. v. BLAISDELL*, 290 U.S. 398, 426. It is a power "not limited to victories in the field." (*STEWART v. KAHN*, Wall. 493, 507; *HAMILTON v. KENTUCKY DISTILLERIES & WAREHOUSE CO.*, 251 U.S. 146, 161); and under it "prices of food and other necessities of

living [may be] fixed or regulated" (U. S. v. MACINTOSH, 283, U.S. 605, 622).

The discretion of the members of this Board is "not unconfined and vagrant." (PANAMA REFINING CO. v. RYAN, 293 U.S. 388, 440). Rather, it is canalized by unusual specificity.

ARGUMENT

Point II.

The right of the deceased to dispose of the insurance proceeds flowers under the Presidential Order and the Decisions by this Board which the Courts may not impair.

The precise import of observations made by the Circuit Court (JUDGE McCORD) to the effect that the funds were "not insurance" and that payment by the employer was "in the nature of a gift" is not clear; their relationship to the express Findings of the Trial Court is dubious. Respondent did not assail the written evidence that Petitioner was designated deceased's beneficiary, without qualifications. No evidence was offered to show a contrary intention of deceased, and the Trial Court specifically found that Petitioner was designated beneficiary.

It is well settled that such insurance benefits flow from the contract between the seamen and shipowner. VINCENT McCORMICK v. MOORE McCORMACK LINES, INC., 1943 A.M.C., pp. 1422-1424.

Notwithstanding all of the evidence discloses that the expressed intention of the deceased was to have Petitioner paid the insurance funds, without restriction, the Trial Court, contrary to Lastrap's wish, and without *any evidence*, engrafted a trust on such fund.

Here is a case of a clear, a simple, a complete written expression directing that in case of death the funds be paid, without restriction, to Petitioner; the Lower Court, though finding in every particular for Petitioner refused recovery sought by Petitioner, unless conditioned upon acceptance as trustee (which deceased did not require), and the Circuit Court regarding such funds "in the nature of a gift" and "not insurance", wholly disregarding deceased's designation of beneficiary, and contrary to the Board's regulations.

The short answer is that the Courts below were simply mistaken in their factual premise. Deliberation justifies the conclusion that the decisions below are erroneous.

An unnecessary and confusing condition is created, both in the construction of the Presidential Order and the Regulations, and in the remedies of designated beneficiaries of deceased seamen.

The applicable Decisions and Regulations do not warrant that designated beneficiaries take only as trustee, and to read such construction into them is to engage in judicial legislation.

Uniformity is of the essence of Maritime jurisdiction (*KNICKERBOCKER ICE CO. v. STEWART*, 253 U.S. 149); but for such uniformity the Courts below have substituted confusion.

Thus, this is a matter of wide importance in the administration of the Presidential Order and the Decisions referred to, and is a matter of national interest, in the sense that it affects countless Seamen and an authoritative decision in the matter involved from this Most Honorable Court will go far toward producing that certainty in law and that uniformity in decision which is unquestionably desirable on a subject which, from its very nature, will necessarily arise continually until the present international struggle ceases.

For the reasons before stated, Petitioner earnestly urges

that this Court grant its Writ of Certiorari directed to the Circuit Court of Appeals for the Fifth Circuit and relieve this Petitioner from the unjust burden to which she is subjected by the terms of the judgment entered against her by said Court.

Conclusion

It is respectfully submitted that the Writ of Certiorari prayed for in the Petition should issue.

Respectfully submitted,

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Counsel for Petitioner

